

Department of Energy

§ 810.3

§ 800.307 Appeals.

Any dispute concerning questions of fact arising under the loan agreement shall be decided in writing by the contracting officer. The borrower may request the contracting officer to reconsider any such decision, which reconsideration shall be promptly undertaken. If not satisfied with the contracting officer's final decision, the borrower, upon receipt of such written decision, may appeal the decision within 60 days in writing to the Chairman, Financial Assistance Appeals Board (FAAB), Department of Energy, Washington, DC 20585. The Board shall proceed in accordance with the Department of Energy's rules and regulations for such purpose. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

Sec.

810.1 Purpose.

810.2 Scope.

810.3 Definitions.

810.4 Communications.

810.5 Interpretations.

810.6 Authorization requirement.

810.7 Generally authorized activities.

810.8 Activities requiring specific authorization.

810.9 Restrictions on general and specific authorization.

810.10 Grant of specific authorization.

810.11 Revocation, suspension, or modification of authorization.

810.12 Information required in an application for specific authorization.

810.13 Reports.

810.14 Additional information.

810.15 Violations.

810.16 Effective date and savings clause.

AUTHORITY: Secs. 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2273); Sec. 104 of the Energy Reorganization Act of 1974, Pub. L. 93-438; Sec. 301, Department of Energy Organization Act, Pub. L. 95-91.

SOURCE: 51 FR 44574, Dec. 10, 1986, unless otherwise noted.

§ 810.1 Purpose.

These regulations implement section 57b of the Atomic Energy Act which empowers the Secretary of Energy to authorize U.S. persons to engage directly or indirectly in the production of special nuclear material outside the United States. Their purpose is to:

(a) Indicate activities which have been generally authorized by the Secretary of Energy and thus require no further authorization;

(b) Indicate activities which require specific authorization by the Secretary and explain how to request authorization; and

(c) Explain reporting requirements for various activities.

§ 810.2 Scope.

10 CFR part 810:

(a) Applies to all persons subject to the jurisdiction of the United States who engage directly or indirectly in the production of special nuclear material outside the United States.

(b) Applies to activities conducted either in the United States or abroad by such persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility or control.

(c) Applies, but is not limited to, activities involving nuclear reactors and other nuclear fuel cycle facilities for the following: fluoride or nitrate conversion; isotope separation (enrichment); the chemical, physical or metallurgical processing, fabricating, or alloying of special nuclear material; production of heavy water, zirconium (hafnium-free or low-hafnium), nuclear-grade graphite, or reactor-grade beryllium; production of reactor-grade uranium dioxide from yellowcake; and certain uranium milling activities.

(d) Does not apply to exports licensed by the Nuclear Regulatory Commission.

§ 810.3 Definitions.

As used in part 810:

Accelerator-driven subcritical assembly system is a system comprising a "subcritical assembly" and a "production accelerator" and which is designed or used for the purpose of producing or processing special nuclear material

(SNM) or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM. In such a system, the “production accelerator” provides a source of neutrons used to effect SNM production in the “subcritical assembly.”

Agreement for cooperation means an agreement with another nation or group of nations concluded under sections 123 or 124 of the Atomic Energy Act.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended.

Classified information means National Security Information classified under Executive Order 12356 or any superseding order, or Restricted Data classified under the Atomic Energy Act.

General authorization means an authorization granted by the Secretary of Energy under section 57b(2) of the Atomic Energy Act to provide certain assistance to foreign atomic energy activities and which is effective without a specific request to the Secretary or the issuance of an authorization to a particular person.

IAEA means the International Atomic Energy Agency.

Non-nuclear-weapon state is a country not recognized as a nuclear-weapon state by the NPT (i.e., states other than the United States, Russia, the United Kingdom, France, and China).

NNPA means the Nuclear Non-Proliferation Act of 1978.

NPT means the Treaty on the Non-Proliferation of Nuclear Weapons.

Nuclear reactor means an apparatus, other than a nuclear explosive device, designed or used to sustain nuclear fission in a self-supporting chain reaction.

Open meeting means a conference, seminar, trade show or other gathering that all technically qualified members of the public may attend and at which they may make written or other personal record of the proceedings, notwithstanding that (1) a reasonable registration fee may be charged, or (2) a reasonable numerical limit exists on actual attendance.

Operational safety means the capability of a reactor to be operated in a manner that prevents uncontrolled or inadvertent criticality, prevents or

mitigates uncontrolled release of radioactivity to the environment, monitors and limits staff exposure to radiation and radioactivity, and protects off-site population from exposure to radiation or radioactivity. Operational safety may be enhanced by providing expert advice, equipment, instrumentation, technology, software, services, analyses, procedures, training, or other assistance that improves the capability of the reactor to be operated in such a manner.

Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Department of Energy, any State or political entity within a State; and (2) any legal successor, representative, agent or agency of the foregoing. Persons under U.S. jurisdiction are responsible for their foreign licensees, contractors or subsidiaries to the extent that the former have control over the activities of the latter.

Production accelerator is a particle accelerator designed and/or intended to be used, with a subcritical assembly, for the production or processing of SNM or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM.

Production reactor means a nuclear reactor specially designed or used primarily for the production of plutonium or uranium-233.

Public information means: (1) Information available in periodicals, books or other print or electronic media for distribution to any member of the public, or to a community of persons such as those in a scientific, engineering, or educational discipline or in a particular commercial activity who are interested in a subject matter; (2) Information available in public libraries, public reading rooms, public document rooms, public archives, or public data banks, or in university courses; (3) Information that has been presented at an open meeting (see definition of “open meeting”); (4) Information that has been made available internationally without restriction on its further dissemination; or (5) Information contained in an application which has been

Department of Energy

§ 810.5

filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184 or which has been made available under 5 U.S.C. 552, the Freedom of Information Act. Public information must be available to the public prior to or at the same time as it is transmitted to a foreign recipient. It does not include any technical embellishment, enhancement, explanation or interpretation which in itself is not public information, or information subject to sections 147 and 148 of the Atomic Energy Act.

Restricted Data means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

Sensitive nuclear technology means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public [see definition of "public information"] which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to Chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or operation manual or an intangible form such as technical services.

Source Material means: (1) Uranium or thorium, other than special nuclear material or (2) ores which contain by weight 0.05 percent or more of uranium or thorium, or any combination of these.

Special nuclear material means (1) plutonium, (2) uranium-233, or (3) uranium enriched above 0.711 percent by weight in the isotope uranium-235.

Specific authorization means an authorization granted by the Secretary of Energy under section 57b(2) of the Atomic Energy Act to a person to provide specified assistance to a foreign atomic energy activity in response to

an application filed under 10 CFR part 810.

Subcritical assembly is an apparatus containing source material or SNM designed or used to produce a nuclear fission chain reaction that is not self-sustaining.

United States, when used in a geographical sense, includes all territories and possessions of the United States.

[51 FR 44574, Dec. 10, 1986, as amended at 58 FR 39638, July 26, 1993; 65 FR 16126, Mar. 27, 2000]

§ 810.4 Communications.

(a) All communications concerning the regulations in this part should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Director, Nuclear Transfer and Supplier Policy Division, NN-43, Office of Arms Control and Nonproliferation. Telephone: (202) 586-2331.

(b) Communications also may be delivered to the Department's headquarters at 1000 Independence Avenue, SW., Washington, DC. All clearly marked proprietary information will be given the maximum protection allowed by law.

[51 FR 44574, Dec. 10, 1986, as amended at 58 FR 39638, July 26, 1993; 65 FR 16127, Mar. 27, 2000]

§ 810.5 Interpretations.

A person may request the advice of the Director, Nuclear Transfer and Supplier Policy Division (NN-43), on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.7, or requires specific authorization under § 810.8; however, unless authorized by the Secretary of Energy, in writing, no interpretation of the regulations in this part other than a written interpretation by the General Counsel is binding upon the Department. When advice is requested from the Director, Nuclear Transfer and Supplier Policy Division, or a binding, written determination is requested from the General Counsel, a response normally will be made within 30 days and, if this is not feasible, an interim response will explain the delay.

[65 FR 16127, Mar. 27, 2000]